

REMARKS

This Amendment After Final is submitted in response to the Office Action dated October 11, 2001. In the Office Action, the Patent Office objects to Claim 2 under 35 U.S.C. § 112. Claims 1-6 and 14-20 are rejected under 35 U.S.C. § 102(b); Claims 7-13 are rejected under 35 U.S.C. § 103(a); and Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Applicants respectfully submit that the objections and/or rejections of pending Claims 1-20 have been overcome or are improper in view of the amendments and for the reasons set forth below.

In the Office Action, the Patent Office objects to Claim 2 under 35 U.S.C. § 112. In this regard, the Patent Office asserts that the word "comprises" should be changed to "comprising." Pursuant to the present filing, Applicants have amended Claim 2 accordingly. Applicants therefore respectfully submit that Claim 2 fully complies with 35 U.S.C. § 112.

In the Office Action, Claims 1-6 and 14-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,518,615 ("*Cherukuri 615*"), U.S. Patent No. 4,794,003 ("*Cherukuri 003*") or U.S. Patent No. 4,452,820 ("*D'Amelia*"). The Patent Office asserts that each of these references discloses each and every feature of the claimed invention. As set forth below, Applicants respectfully submit that Claims 1-6 and 14-20 are not anticipated by the above-cited references.

Claims 1, 14 and 18 are independent claims that relate to a chewing gum, and a method of producing same, that expressly contains lecithin and expressly excludes filler(s). The remaining claims depend from independent Claims 1, 14 or 18. By producing a lecithin-containing gum that is free of fillers, Applicants have surprisingly found that the chewing gum cuds that result therefrom have reduced adhesion to environmental surfaces, such as wood, concrete, fabric, carpet, metal and other such surfaces. *See*, Specification, page 4, lines 25-28.

Unlike the chewing gum of the present invention, the references cited by the Patent Office feature gum products wherein fillers and/or lecithin are optional ingredients. For example, *Cherukuri 003* discloses that fillers may be added if desired and emulsifiers, such as lecithin, may be optionally used. *See, Cherukuri 003*, column 2, line 50-57; column 6, lines 34-36. *D'Amelia*, like *Cherukuri 003*, discloses that the use of a filler and/or emulsifier (lecithin) is optional. *See, D'Amelia* Abstract. At most, *Cherukuri 615* discloses that the use of a filler within chewing gum is optional. In its Abstract, *Cherukuri 615* discloses that the chewing gum base composition includes fillers.

In contrast to the above-cited references, the use of lecithin and the non-use of a filler are not optional components of the claimed invention. More specifically, the present invention expressly mandates that the chewing gum include lecithin but no filler. These requirements of the present invention are the result of Applicants' unexpected finding that such gum formulations result in reduced adhesion to environmental surfaces. In this regard, if either of these aspects of the claimed invention were disregarded, the resulting gum product may not display the reduced adhesion characteristics of the present invention. Because the cited references feature formulations of gums that can be devoid of lecithin and inclusive of fillers, the gum products of the cited references may not result in a reduced-adhesion chewing gum. Indeed, nowhere does *Cherukuri 003*, *D'Amelia* or *Cherukuri 615* recognize that a gum expressly containing lecithin but not a filler can reduce adhesive properties of the gum, particularly after the gum has been chewed. Accordingly, the cited references do not anticipate the present invention.

Based on the fact that each of the references fails to disclose a chewing gum that includes lecithin and that does not include a filler, let alone such chewing gum that can reduce adhesion to

environmental surfaces, Applicants submit that the references fail to anticipate Claims 1-6 and 14-20. Applicants therefore respectfully request that this rejection be withdrawn.

In the Office Action, Claims 8-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cherukuri 615*, *Cherukuri 003* or *D'Amelia*. The Patent Office asserts that each of these references teaches or suggests each and every feature found in Claims 8-13. Claims 8-13 relate to a gum base that, in part, includes at least 20% by weight lecithin and does not include a filler. Of these claims, Claim 8 is the sole independent claim. As previously discussed, Applicants have surprisingly found that chewing gums that include lecithin and do not include filler in the gum base can produce gum cuds that if improperly discarded have reduced adhesion to environmental surfaces such as wood, concrete, fabric, carpet, metal and other surfaces.

Unlike the claimed invention, each of these references fails to disclose the use of lecithin and/or the non-use of a filler within a gum base. As previously discussed, each of the references merely discloses that emulsifiers such as lecithin and/or fillers are optional ingredients of chewing gum. Further, nowhere do each of these references teach or suggest such features, let alone a gum base that includes at least 20% by weight of lecithin as required by independent Claim 8.

In addition to teaching gum formulations wherein it is optional to use lecithin and to exclude fillers, *Cherukuri 003*, *D'Amelia* or *Cherukuri 615* fail to recognize that a gum having such features can reduce adhesive properties of the gum, particularly after the gum has been chewed. In contrast, Applicants have surprisingly found that chewing gums that include lecithin and do not include filler in the gum base can produce gum cuds that if improperly discarded have reduced adhesion to environmental surfaces. Moreover, Applicants have conducted

experimental tests to demonstrate the efficacy of a chewing gum having such features. See, Specification, pages 11-14.

Based on the fact that the references fail to teach or suggest each and every feature of Claims 8-13, Applicants submit that the references, alone or in combination, fail to render obvious the claimed invention as required by these claims. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, Claim 7 is rejected under 35 U.S.C. § 103 as being unpatentable over *Cherukuri 615*, *Cherukuri 003* or *D'Amelia* in view of U.S. Patent No. 4,246,286 ("*Klose*"). The Patent Office relies on *Klose* to remedy the deficiencies of the other references, particularly the deficiencies with respect to the antioxidant and colorant features of Claim 7.

Applicants submit that this rejection is improper. Claim 7 depends from independent Claim 1 and therefore as a matter of law incorporates each feature of independent Claim 1.

As previously discussed, *Cherukuri 615*, *Cherukuri 003* and *D'Amelia* each fail to teach or suggest each and every feature, such as the use of lecithin and the non-use of filler, as required by independent Claim 1. Further, *Klose* cannot remedy the deficiencies of these references. The Patent Office merely relies on *Klose* for its teaching regarding antioxidants and colorants.

Based on the fact that the cited references fail to teach or suggest each and every feature of Claim 7, Applicants submit that these references, alone or in combination, fail to render obvious Claim 7. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-16 of co-pending application No. 09/648,028 in view of *Cherukuri 615*, *Cherukuri 003* or *D'Amelia*. As

Applicants previously represented, they will file upon notice of allowable subject matter in either one of the co-pending applications a suitable Terminal Disclaimer to address this rejection.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of the same.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "**Versions with Markings to Show Changes Made.**"

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Please amend Claim 2 as follows:

2. (Twice Amended) The chewing gum of Claim 1 including:

an elastomer ~~comprises~~ comprising approximately 3% to about 50% by weight of the water insoluble portion;

a softener ~~comprises~~ comprising approximately 3% to about 50% by weight of the water insoluble portion; and

an emulsifier ~~comprises~~ comprising approximately 2% to about 20% by weight of the water insoluble portion.